APPEAL NO. 040667
FILED MAY 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 13, 2004. The hearing officer decided that on _____, the appellant (claimant) sustained a compensable left shoulder, lumbar spine, and left knee injury; that the compensable injury did not include a cervical injury, and that the claimant had disability from December 16, 2002, through April 4, 2003. The claimant filed a request for review in which she argued that the determinations by the hearing officer that the claimant's injury did not extend to her cervical spine and that she did not have disability after April 4, 2003, were not supported by the evidence. The claimant also points out a typographical error in the decision of the hearing officer. The respondent (carrier) filed a response in which it argues that the claimant's appeal was untimely and that the hearing officer's decision was supported by the evidence.

DECISION

We reform the decision of the hearing officer to correct a typographical error. Finding our jurisdiction has been invoked, sufficient evidence to support the decision of the hearing officer, and no reversible error in the record, we affirm the decision and order of the hearing officer as reformed.

We must first address the carrier's jurisdictional argument that the claimant's request for review was not timely filed. Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the parties on March 2, 2004. The claimant does not state when she received the decision[1], but by operation of Tex W.C. Comm'n, 28 TEX. ADMIN CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, she was deemed to have received the hearing officer's decision five days after it was mailed, or by March 7, 2004. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.033 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Therefore, the deadline for the claimant to file or mail an appeal was March 26, 2004. As the appeal was sent to the Commission on March 26, 2004, by facsimile transmission, and received the same day, it was clearly timely filed.

To correct a typographical error, we reform Finding of Fact No. 7 by changing the dates therein from December 16, 2003, to December 16, 2002, and from April 3, 2003, to April 4, 2003.

[1] The carrier argues that the claimant was required to state the date of her receipt of the hearing officer's decision in her appeal, but we find no such requirement in the 1989 Act nor in the Commission's rules.

There was conflicting evidence presented on the appealed issues of extent of injury and disability. Those issues are questions of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.), Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The claimant was injured when her pant leg caught on a piece of metal protruding from a commercial refrigerator and she fell to her hands and knees. Although the claimant sought compensability for a cervical injury, the hearing officer found persuasive several medical reports in which the doctors opined that the claimant's cervical problem was a preexisting degenerative condition. Further, the hearing officer noted that he found unpersuasive and largely conclusory, several off-work reports that kept the claimant off work after April 4, 2003. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the compensability or disability issues.

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge